

ZUMPARNO PATRICIOS

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January 19, 2021

VIA FEDEX

Honorable Lawrence J. Vilardo
United States District Court
Western District of New York
Robert H. Jackson United States Courthouse
2 Niagara Square
Buffalo, New York 14202

FILED UNDER SEAL

Re: *Antonio Caballero v. Fuerzas Armadas Revolucionarias de Colombia, et al.*, Case No.: 1:20-mc-00040-LJV

Dear Judge Vilardo:

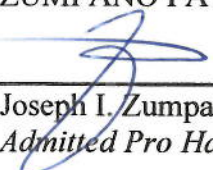
Enclosed please find Plaintiff Antonio Caballero's Notice of Supplemental Authority to be filed under temporary seal pursuant to Text Order [D.E. 8]. Specifically, the Notice of Supplemental Authority is being submitted in support of Plaintiff Antonio Caballero's pending Motion for Issuance of Court Ordered Post-Judgment Writ of Execution Pursuant to Section 201(a) of the Terrorism Risk Insurance Act of 2002 [D.E. 22], which was previously filed under seal on January 11, 2021.

Also, due to recent collections, we enclosed herewith a Notice of Partial Satisfaction, which attaches a revised proposed Writ of Execution. The revised proposed Writ of Execution updates the amount sought by the Writ and also includes "Citibank, N.A." as the holder of the accounts, which is unintentionally omitted from the originally submitted Writ.

Additionally, enclosed is a CD with the aforementioned materials. Thank you for your attention to this matter.

Sincerely,

ZUMPARNO PATRICIOS, P.A.



Joseph I. Zumpano
Admitted Pro Hac Vice

MIAMI | CHICAGO | NEW YORK | SALT LAKE CITY

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UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

CASE NO: 1:20-mc-00040-LJV

ANTONIO CABALLERO,

Plaintiff,

vs.

FUERZAS ARMADAS
REVOLUCIONARIAS DE COLOMBIA,
a/k/a FARC-EP a/k/a
REVOLUTIONARY ARMED FORCES
OF COLOMBIA; and THE NORTE DE
VALLE CARTEL,

FILED UNDER SEAL

Defendants.

NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff, Antonio Caballero, submits this Notice of Supplemental Authority (the "Notice") in support of his Sealed Motion for Issuance of Court Ordered Post-Judgment Writ of Execution Pursuant to Section 201(A) of the Terrorism Risk Insurance Act of 2002, D.E. 22 (the "Motion").

In the Motion, Caballero seeks an agent and instrumentality determination regarding several entities, including: (i) Aceites Y Solventes Venezolanos SA; (ii)

Petroanzoategui SA¹ (“Petroanzoategui”); and (iii) Venfleet Asphalt Ltd. (herein the “Relevant Entities”). Caballero has done so because Citibank, N.A.’s (“Citibank”) response to a subpoena indicates that it is holding accounts in its Buffalo branch (the “Buffalo Accounts”) in the name of the Relevant Entities.²

Through this Notice of Supplemental Authority, Caballero hereby notifies the Court that:

- (i) the Stansell Plaintiffs have obtained orders in the Southern District of New York declaring the Relevant Entities to be agents and instrumentalities of the FARC. *See* D.E. 142 at 2 (citing to D.E. 114 under seal), *Stansell, et al. v. FARC, et al.*, 16-mc-00405-ALC (herein “Stansell SDNY”);
- (ii) in their filings dated January 19, 2021, the Stansell Plaintiffs revealed that they are seeking turnover in the Southern District of New York of Citibank accounts, which Caballero believes to be the Buffalo

¹ “Petroanzoategui SA” is also referred to as “Petro San Felix SA.” *See* Supplemental Sworn Declaration of John Robert McBrien Regarding Agents and Instrumentalities of the FARC executed on September 8, 2020 (the “Supplemental Declaration”). Moreover, Citibank, N.A. has in its production referred to “Petro San Felix SA” as “AKA - Petrolera Zuata SA; Petrozuata.”

² Because Petro San Felix SA also has blocked assets at Sumitomo Mitsui Bank in Manhattan, Caballero has sought and obtained an order from Judge Nathan, previously provided to this Court as supplemental authority, finding it to be an agent and instrumentality and authorizing the issuance of a writ of execution.

Accounts. See Stansell SDNY, D.E. 141, 142. Because the “separate entity rule” is still the law in New York, the Stansell Plaintiffs are improperly seeking turnover of the Buffalo Accounts from branches located in the Southern District of New York or by service in Buffalo of a writ from the Southern District of New York. *Shaheen Sports, Inc. v. Asia Ins. Co.*, No. 98-cv-5951 (LAP), 2012 U.S. Dist. LEXIS 36720, at *9-19 (S.D.N.Y. Mar. 18, 2012) (noting the continuing viability of the “separate entity rule”); *Det Bergenske Dampskibsselskab v. Sabre Shipping Corp.*, 341 F.2d 50, 53-54 (2d Cir. 1965) (“We hold, therefore, that a warrant of foreign attachment, served on a branch office located in the Eastern District of New York, is ineffective to garnishee a bank account at a branch office of the same bank located in the Southern District of New York.”).

Caballero respectfully requests that this Court take notice of the above and also the “Timing Cautions” as expressed in *Stansell v. Revolutionary Armed Forces of Columbia [sic]*, 771 F.3d 713, 729 (11th Cir. 2014) (emphasis added below), to wit:

During the pendency of execution proceedings, a number of events may occur which make satisfaction using a particular asset impossible. ***Other judgment creditors may seek to execute against the asset.*** The government may take action that makes the asset unreachable, including seizure or de-listing of the alleged agency or instrumentality (which may or may not be the result of a finding that the SDNT designation was incorrectly reached), the latter of which would enable the asset owner to

move the asset (or proceeds from its sale) outside the reach of any United States district court.

DATED this 19th day of January 2021.

Respectfully Submitted

ZUMPANO PATRICIOS, P.A.

/s/ Joseph I. Zumpano

Joseph I. Zumpano

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UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

CASE NO: 1:20-mc-00040-LJV

ANTONIO CABALLERO,

FILED UNDER SEAL

Plaintiff,

vs.

FUERZAS ARMADAS
REVOLUCIONARIAS DE COLOMBIA,
a/k/a FARC-EP a/k/a
REVOLUTIONARY ARMED FORCES
OF COLOMBIA; and THE NORTE DE
VALLE CARTEL,

Defendants.

**PLAINTIFF ANTONIO CABALLERO'S NOTICE OF PARTIAL
SATISFACTION OF FINAL JUDGMENT**

Plaintiff Antonio Caballero, by and through undersigned counsel, hereby represents to the Court that collections have partially satisfied the non-trebled portion of his compensatory damages award such that the balance, without interest, due on the non-trebled portion of his compensatory damages set forth in his final judgment is currently \$37,339,417.07, which is the amount he is seeking to attach within this Court's jurisdiction.

Attached hereto as **Exhibit A** is a revised proposed Writ of Execution that updates the amount sought in the Writ and also revises the attachment to the Writ to make clear that the Garnishee is Citibank, N.A.

DATED: January 19, 2021.

Respectfully submitted,

/s/ Joseph I. Zumpano

Joseph I. Zumpano (Florida Bar No.: 0056091)

Admitted *Pro Hac Vice*

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EXHIBIT A

WRIT OF EXECUTION

United States District Court		DISTRICT Western District of New York	
TO THE MARSHALL OF: The Western District of New York			
YOU ARE HEREBY COMMANDED, that of the goods and chattels, lands and tenements in your district belonging to:			
NAME: FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA, a/k/a FARC-EP a/k/a REVOLUTIONARY ARMED FORCES OF COLOMBIA (the "FARC"), and any agent or instrumentality thereof, including blocked assets of the entities in Exhibit 1 attached hereto.			
you cause to be made and levied as well as a certain debt of:			
DOLLAR AMOUNT		DOLLAR AMOUNT	
\$37,339,417.07			
in the United States District Court for the Western District of New York before the Judge of the said Court by the consideration of the same Judge lately recovered against the said, FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA			
and also the costs that may accrue under this writ. And that you have above listed money at the place and date listed below; and that you bring this writ with you.			
PLACE: 2 Niagara Square, US Courthouse		DISTRICT: Western District of New York	
CITY: Buffalo, NY		DATE:	
Witness the Honorable <div style="text-align: center;">_____ (United States Judge)</div>			
DATE	CLERK OF THE COURT		
	(BY)		
RETURN			
DATE RECEIVED		DATE OF EXECUTION OF WRIT	
This writ was received and executed.			
U.S. MARSHAL		(BY) DEPUTY MARSHAL	

Exhibit 1

- PDV MARINA SA, a subsidiary directly and/or indirectly owned 50 percent or more by PETROLEOS DE VENEZUELA S.A (a.k.a. PDVSA; a.k.a. PETROLEOS DE VENEZUELA S A; a.k.a. PETROLEOS DE VENEZUELA, S.A.; a.k.a. REFINERIA EL PALITO
 - Account ID#: #####4332 held by Citibank, N.A.
- BANCO CENTRAL DE VENEZUELA (a.k.a. CENTRAL BANK OF VENEZUELA)
 - Account ID#: #####4751 held by Citibank, N.A.
 - Account ID#: #####4752 held by Citibank, N.A.
- ACEÍTES Y SOLVENTES VENEZOLANOS SA, a subsidiary directly and/or indirectly owned 50 percent or more by PETROLEOS DE VENEZUELA S.A (a.k.a. PDVSA; a.k.a. PETROLEOS DE VENEZUELA S A; a.k.a. PETROLEOS DE VENEZUELA, S.A.; a.k.a. REFINERIA EL PALITO
 - Account ID#: #####4329 held by Citibank, N.A.
- PETROANZOATEGUI SA; PETRO SAN FELIX SA, AKA - PETROLERA ZUATA SA; PETROZUATA, a subsidiary(ies) directly and/or indirectly owned 50 percent or more by PETROLEOS DE VENEZUELA S.A (a.k.a. PDVSA; a.k.a. PETROLEOS DE VENEZUELA S A; a.k.a. PETROLEOS DE VENEZUELA, S.A.; a.k.a. REFINERIA EL PALITO
 - Account ID#: #####4346 held by Citibank, N.A.
- VENFLEET ASPHALT LTD., a subsidiary directly and/or indirectly owned 50 percent or more by PETROLEOS DE VENEZUELA S.A (a.k.a. PDVSA; a.k.a. PETROLEOS DE VENEZUELA S A; a.k.a. PETROLEOS DE VENEZUELA, S.A.; a.k.a. REFINERIA EL PALITO
 - Account ID#: #####4333 held by Citibank, N.A.
- VENFLEET PRODUCTS LTD, a subsidiary directly and/or indirectly owned 50 percent or more by PETROLEOS DE VENEZUELA S.A (a.k.a. PDVSA; a.k.a. PETROLEOS DE VENEZUELA S A; a.k.a. PETROLEOS DE VENEZUELA, S.A.; a.k.a. REFINERIA EL PALITO
 - Account ID#: #####4335 held by Citibank, N.A.
- VENFLEET LTD, a subsidiary directly and/or indirectly owned 50 percent or more by PETROLEOS DE VENEZUELA S.A (a.k.a. PDVSA; a.k.a. PETROLEOS DE VENEZUELA S A; a.k.a. PETROLEOS DE VENEZUELA, S.A.; a.k.a. REFINERIA EL PALITO,
 - Account ID#: #####4336 held by Citibank, N.A.
- MINISTERIO DEL PODER POPULAR DE ECONOMIA Y FINANZAS ("Ministerio del Poder Popular de Eco"),
 - Account ID#: #####5401 held by Citibank, N.A.
 - Account ID#: #####5403 held by Citibank, N.A.